IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12225 of 2002

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJENDRA GULABCHAND SANGANI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 12225 of 2002

MR PRAVIN GONDALIYA for Petitioner No. 1

MR SJ DAVE, AGP for Respondent No. 1-3

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

Date of decision: 12/05/2003

ORAL JUDGEMENT

#. By this petition, the petitioner - detenu has assailed the detention order passed on 18.9.2002 under

the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the Act"), by the Commissioner of Police, Rajkot City, on the ground that the petitioner is a "dangerous person" and that he is also a headstrong and anti-social and that his anti-social and criminal activities are directly or indirectly causing or likely to cause harm, danger and alarm of insecurity amongst the people at large or a section thereof and that he is thus disturbing the public order and peace and that there is also a grave and widespread danger to public life and property.

#. Challenge against the impugned order of detention is on various divergent grounds which are countenanced by the respondent-authority by filing an affidavit-in-reply dated 16th February, 2003.

#. After having heard the learned advocate for the petitioner and the learned Assistant Government Pleader, and considering the factual profile emerging from the record of the case, coupled with the design and object of the Act, this Court has no hesitation in arriving at a conclusion that the detention order impugned in this Special Civil Application is not sustainable on the ground of non-application of mind to the vital facts before passing the questioned detention order. It is evidently manifest from the detention order itself that in one out of three criminal cases, the detenu was in judicial custody and til the question detention order came to be passed, he was not released on bail. Despite this, the detaining authority has observed in paragraph 8 of the detention order as if the factum of judicial custody of the detenu was not taken into account and only release on bail in other two offences was considered.

#. In view of the undisputable aforesaid factual panorama, the detaining authority obviously has not applied its mind to the vital fact, and there was non-application of mind before recording the detention order, which ipso-facto would constitute sufficient ground for quashing the same in the light of celebrated principles of natural justice in general and a host of decisions on this point, more particularly the decision of the Hon'ble Apex Court in the case of Amratlal v. Union of India reported in AIR 2000 SC 3675.

#. It cannot be disputed that firstly, there must be cogent material before the detaining authority, and secondly, there must be material to show that the detaining authority has applied its mind to the vital and important aspects and facts before reaching the

subjective satisfaction as required under the law. Satisfaction of detaining authority must be based on the material and on the application of mind to vital material. Likelihood of the detenu moving an application for bail is one thing and likelihood of his being released on bail is a different connotation, expression and concept.

#. In the opinion of this Court, the impugned detention order cannot be sustained on the aforesaid ground alone. Therefore,, this Court is left with no alternative but to raise its hands in helplessness and to quash and set aside the impugned order in exercise of its powers under Article 226 of the Constitution of India. The questioned detention order, therefore, is quashed and set aside and the respondent-authority is directed to release the petitioner - Rajendra Gulabchand Sangani forthwith provided he is not required under any other order or case. The petition stands allowed accordingly. Rule is made absolute with no order as to costs. Direct Service is permitted.

(J.N.Bhatt, Acting C.J.)

(sunil)